

Frequently Asked Questions (FAQs) about new Section 139D:

Q1: What Indian health care benefits may be excluded from gross income under section 139D?

A1: The Patient Protection and Affordable Care Act added Section 139D to the Internal Revenue Code. Section 139D provides, in general, that gross income does not include the value of any qualified Indian health care benefit. Section 139D defines the term “qualified Indian health care benefit” to mean:

- any health service or benefit provided or purchased, directly or indirectly, by the Indian Health Service (IHS) through a grant to, or contract or compact with, an Indian tribe or tribal organization, or through a third-party program funded by the IHS;
- medical care provided or purchased by, or amounts to reimburse for medical care provided by, an Indian tribe or tribal organization for, or to, a member of an Indian tribe, including a spouse or dependent of the member;
- coverage under accident or health insurance (or an arrangement having the effect of accident or health insurance), or an accident or health plan, provided by an Indian tribe or tribal organization for medical care to a member of an Indian tribe, including a spouse or dependent of the member; and
- any other medical care provided by an Indian tribe or tribal organization that supplements, replaces, or substitutes for a program or service relating to medical care provided by the Federal government to Indian tribes or their members.

For purposes of Section 139D, the term “medical care” has the same meaning as in [Section 213](#) (deduction for medical and dental expenses). The terms “accident or health insurance” and “accident or health plan” have the same meaning as in [Section 105](#) (amounts received under accident and health plans).

Q2: When is the exclusion in Section 139D effective?

A2: The exclusion is effective for benefits and coverage provided after March 23, 2010.

Q3: Do the recipients of the qualified health care benefit have to be employees of an Indian tribe to qualify for the exclusion?

A3: No. To qualify, the recipient must be a member of an Indian tribe, the spouse of a member, or a dependent of a member of an Indian tribe.

Employment by an Indian tribe alone does not qualify a recipient for the exclusion under Section 139D, but other Internal Revenue Code provisions may exclude employer-provided health coverage.

Q4: How is “Indian tribe” defined for purposes of Section 139D?

A4: For purposes of Section 139D, an “Indian tribe” means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village or regional or village corporation, as defined in, or established under, the Alaska Native Claims Settlement Act, that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. See the [Federal Register dated October 1, 2010](#) (75 FR 60810), for the most recent listing of federally recognized Indian tribes.

Q5: Do the recipients have to be members of the same Indian tribe as the provider of the qualified health care benefit to qualify for the exclusion?

A5: No. The recipients do not have to be members of the same Indian tribe as the provider of the qualified health care benefits to qualify for the exclusion. To qualify, the recipient need only be a member of any Indian tribe, the spouse of a member, or a dependent of a member of an Indian tribe.

Q6: May a member of an Indian tribe exclude from gross income the value of health services or benefits provided by the IHS through a contract with an Indian tribe?

A6: Yes. A tribal member may exclude from gross income the value of health services or benefits provided by the IHS through a contract with an Indian tribe.

Q7: May parents who are members of an Indian tribe and who are divorced, separated, or living apart treat their child as a dependent of both parents for purposes of Section 139D?

A7: [Rev. Proc. 2008-48, 2008-36 I.R.B. 586](#), describes the circumstances in which the IRS will treat a child of parents who are divorced, separated, or living apart as the dependent of both parents for purposes of Section 105, [Section 213](#), and certain other Code sections. Similarly, taxpayers who are within the scope of Rev. Proc. 2008-48 and who are members of an Indian tribe may treat their child as a dependent of both parents for purposes of the exclusion in Section 139D. If only one parent within the scope of Rev. Proc. 2008-48 is a member of an Indian tribe, that parent may treat the child as a dependent for purposes of Section 139D.

Q8: May a recipient exclude insurance premiums paid by an Indian tribe?

A8: Yes, if the insurance premium qualifies as medical care as defined by [Section 213](#) and if the other requirements of Section 139D are met.

Section 213 includes “insurance” within the definition of medical care; however, Section 213 limits the types of insurance premiums that qualify as medical care. [IRS Publication 502](#), Medical and Dental Expenses, explains what medical care qualifies for the exclusion under [Section 213](#).

Q9: May a recipient exclude Medicare premiums paid by an Indian tribe?

A9: Generally, yes. If the other requirements of Section 139D are met, a recipient may exclude Medicare premium payments paid by an Indian tribe if:

- The tribal member is covered under Medicare Part A and is not covered under social security. This occurs if a tribal member voluntarily enrolled in Medicare Part A because the tribal member was not covered under social security. In this situation, if an Indian tribe were to pay the tribal member’s premiums, these premiums would be excluded from the income of the recipient under Section 139D;
- If the tribal member has coverage under Medicare Part B; or
- If the tribal member has coverage under Medicare Part D.

Q10: Does the exclusion apply to reimbursement of Medicare taxes withheld from a tribal member’s wages?

A10: No. Medicare taxes do not come within the meaning of medical care.

Q11: May a recipient exclude payments made by an Indian tribe for improvements to the recipient’s home?

A11: It depends upon the nature of the improvements. Certain repairs or improvements made for medical reasons may be excludable under Section 139D. If an improvement qualifies as an expense under [Section 213](#) of the Code, it will qualify for the 139D exclusion if the other requirements of Section 139D are met. [Publication 502](#) explains this rule. Generally, payments made for minimal improvements related to medical care, such as adding wheel chair ramps, would be excludable. More significant improvements related to medical care, such as adding an elevator to a home, may be deducted only to the extent the cost of the improvement exceeds the increase in value of the home.

Q12: May a recipient exclude the payments made by an Indian tribe for transportation or lodging costs related to medical care?

A12: If a transportation or lodging cost would qualify as a deductible expense under [Section 213](#), the payment of these costs would be excludable if the other requirements of Section 139D are met. [Publication 502](#) explains when an expense may qualify as a deductible expense.

These frequently asked questions and answers are provided for general information only and should not be cited as any type of legal authority. They are designed to provide the user with information required to respond to general inquiries. Due to the uniqueness and complexities of Indian law and Federal tax law, it is imperative to ensure a full understanding of the specific question presented, and to perform the requisite research to ensure a correct response is provided.